

Advisory Opinion

IECDB AO 2009-09

May 28, 2009

Gary Hinzman
Via Email

Dear Mr. Hinzman:

This opinion is in response to your email letter of May 11, 2009, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(12) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise us that you are employed by the Department of Correctional Services (DOC) and that you are contemplating running for Mayor of Cedar Rapids. Under the form of government in Cedar Rapids, city employees ultimately report to the city manager. The city charter specifically states that city council members only have authority over the city manager, city clerk, and the city attorney. The council also provides advice and consent for the city manager to hire the police chief and fire chief. The charter does not allow the council members to hire or supervise other city employees.

You further advise us that your spouse is a financial analyst for the city audit department, your daughter is a supervisor in the city housing department, and your brother-in-law is a supervisor for the streets department.

QUESTION:

Is it a conflict of interest if you were elected Mayor of Cedar Rapids and had relatives employed by the city?

OPINION:

Our jurisdiction in administering the laws in Chapter 68B to political subdivisions of government is advisory only.¹ Under Iowa Code section 68B.32A(12), local government personnel may obtain an advisory opinion from the Iowa Ethics and Campaign Disclosure Board concerning the application of the chapter. If the advice in the opinion

is followed, it constitutes a defense to a complaint. However, complaints alleging violations of the chapter by local government personnel are filed with the appropriate county attorney.² We also note that this opinion does not interpret the nepotism laws in Iowa Code chapter 71 and does not interpret any conflict of interest provisions under the authority of the Cedar Rapids Board of Ethics.

Iowa Code section 68B.2A prohibits you and your “immediate family members” from engaging in “any outside employment or activity” that is in conflict with your “official duties and responsibilities.” The statute then sets out three examples of conduct or activities when an impermissible conflict of interest exists.³ The Board has consistently held that “outside employment” includes employments with different government entities.

Iowa Code section 68B.2(11) defines “immediate family members” as including your “spouse and dependent children.” We assume that your daughter is no longer a “dependent child” and thus would not fall within the definition of “immediate family members.” In addition, a “brother-in-law” is not included in this definition. As such, a conflict of interest under Iowa Code section 68B.2A would not exist in situations involving your daughter and brother-in-law.

In situations involving you and your spouse, neither of you could engage in the conduct or activities described in Iowa Code section 68B.2A when dealing with the government positions the other one holds. It appears unlikely based on the statements you provided in your opinion request that if you were elected that any of the three examples set out under the statute would be triggered. However, your spouse may have some auditing functions over your office that could be an issue.

As a consequence of the Board’s position that holding two government offices or positions triggers Iowa Code section 68B.2A, if you are elected you must also be careful to make sure that you do not engage in the conduct or activities described in the statute involving being mayor and your position with DOC. However, nothing in the conflict of interest law or in the campaign finance laws in Iowa Code chapter 68A would prohibit you from being employed by the state and serving as mayor of a city.⁴

In closing, if it does appear that you or your spouse would trigger any of the examples in Iowa Code section 68B.2A, we invite either of you to submit an additional opinion request. In addition, if you would like additional guidance on situations involving your employment with DOC and serving as a local elected official you may seek an additional opinion.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe

John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹Pursuant to 2009 Iowa Acts, HF 809, section 41 effective July 1, 2009, the Board may enter into an agreement with a political subdivision to enforce a code of ethics adopted by the political subdivision.

²See Iowa Code sections 68B.26 and 68B.32B(1). We do note that complaints alleging violations of Chapter 68B by local officials and local employees involving the lobbying laws are subject to the applicable jurisdictions of the House and Senate Ethics Committees (legislative lobbying) and the Board (executive branch lobbying) under Iowa Code sections 68B.31, 68B.32(1), and 68B.32A(13).

³Iowa Code section 68B.2A was amended by the 2009 General Assembly. However, those amendments do not impact the analysis of this opinion (see 2009 Iowa Acts, Senate 52, sections 1 and 2).

⁴See IEADB Advisory Opinion 2002-16 for additional guidance.